

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)

---

IN THE MATTER OF  
THE COMPLAINT OF  
ETERNITY SHIPPING, LTD. AND  
EUROCARRIERS, S.A  
FOR EXONERATION FROM OR  
LIMITATION OF LIABILITY

\*  
\*  
\*  
\*

Civil Action No.: L-01-CV-0250

\* \* \* \* \*

**LIMITATION PLAINTIFFS' MEMORANDUM REPLY TO  
AMERICAN BUREAU OF SHIPPING'S PARTIAL OPPOSITION TO  
LIMITATION PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON  
FIRST AMENDED CLAIM FOR DAMAGES OF JOSEFINA GONZALES**

Limitation Plaintiffs Eternity Shipping, Ltd. and Eurocarriers, S.A., by their undersigned attorneys, respectfully submit this Reply Memorandum in support of their Motion for Summary Judgment on the First Amended Claim for Damages of Josefina Gonzales. Third-Party Defendant American Bureau of Shipping ("ABS") has filed a partial opposition to Limitation Plaintiffs' Motion, only to the extent that their Motion seeks dismissal of ABS' claims for contribution and indemnity of non-pecuniary damages. Given that it is clear Mrs. Gonzales cannot pursue recovery for non-pecuniary damages from ABS, Limitation Plaintiffs cannot be liable to ABS for indemnification or contribution of such damages.<sup>1</sup>

As detailed in Limitation Plaintiffs' motion, and ABS' partial opposition, the overwhelming majority of courts have found that Miles v. Apex Marine Corporation, 498 U.S. 19 (1990), stands for the proposition that there is no recovery for non-pecuniary damages by a Jones Act seamen in a wrongful death action or an action under general

---

<sup>1</sup> The issue also becomes moot in light of ABS' Motion for Summary Judgment on Mrs. Gonzales' claims, which is well founded and should be granted in its entirety.

maritime law, even against a non-employer defendant. The Court of Appeals for the Fifth Circuit most recently confirmed this in Scarborough v. Clemco Indus., Inc., 391 F. 3d 660 (11<sup>th</sup> Cir. Nov. 24, 2004), ruling that a Jones Act seaman or his survivors cannot recover nonpecuniary damages from a non-employer third party. The Fifth Circuit noted that it would not “retreat from the bright line directive of Miles.” Scarborough, 391 F. 3d at 668. This Court too must follow Miles and dismiss Mrs. Gonzales’ claims for non-pecuniary damages against Third-Party Defendant ABS, as well as against Limitation Plaintiffs.



M. Hamilton Whitman, Jr., Trial Bar No.: 00373  
Carla N. Bailey, Trial Bar No.: 26367  
Ober, Kaler, Grimes & Shriver  
A Professional Corporation  
120 E. Baltimore Street  
Baltimore, Maryland 21202  
(410) 685-1120

Attorneys for Eternity Shipping, Ltd. and  
Eurocarriers, S.A.